

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Proposed Rules of the Board of Architecture, Engineering, Land Surveying, Landscape Architecture, Geoscience and Interior Design, *Minnesota Rules* Chapters 1800 and 1805

**ORDER OF CHIEF
ADMINISTRATIVE LAW JUDGE
ON REVIEW OF RULES UNDER
MINN. STAT. § 14.26, SUBD. 3(b)**

The Minnesota Board of Architecture, Engineering, Land Surveying, Landscape Architecture, Geoscience, and Interior Design (Board) has adopted the above-entitled rules without a hearing pursuant to Minn. Stat. § 14.26. On May 14, 2013, the Office of Administrative Hearings received the documents that must be filed by the Board under Minn. Stat. § 14.26 and Minn. R. 1400.2310.

On May 24, 2013, the Administrative Law Judge issued the Order on Review of Rules under Minn. Stat. § 14.26. As set forth in the May 24, 2013 Order, the rules contained two defects.

Based upon a review of the written submissions and filings, Minnesota Statutes, Minnesota Rules, and the May 24, 2013 Order,

IT IS HEREBY ORDERED THAT: the findings of the Administrative Law Judge in the May 24, 2013 Order on Review of Rules under Minn. Stat. § 14.26 regarding the disapproval of the rules are approved. The reasons for the disapproval of the rules and the changes recommended to correct the defects found are as set forth in the attached Order.

Dated this 28th day of May 2013.

s/Tammy L. Pust
TAMMY L. PUST
Chief Administrative Law Judge

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Board of Architecture, Engineering, Land
Surveying, Landscape Architecture,
Geoscience and Interior Design,
Minnesota Rules Chapters 1800 and 1805

**ORDER ON REVIEW OF
RULES UNDER MINNESOTA
STATUTES, SECTION 14.26**

This matter came before Administrative Law Judge Eric L. Lipman upon the application of the Board of Architecture, Engineering, Land Surveying, Landscape Architecture, Geoscience and Interior Design (the Board) for a legal review under Minn. Stat. § 14.26.

On May 14, 2013, the Board filed documents seeking review and approval of the above-entitled rules under Minn. Stat. § 14.26 and Minn. R. 1400.2310.

Based upon a review of the written submissions and filings, and for the reasons set forth in the attached memorandum,

IT IS HEREBY DETERMINED THAT:

1. The agency has the statutory authority to adopt the rules.
2. The rules were adopted in compliance with all procedural requirements of Minnesota Statutes, Chapter 14, and Minnesota Rules, Chapter 1400.
3. With two exceptions, the rules are needed and reasonable. However, the revisions to Part 1800.2300, subpart 2a, paragraph (A), clauses (4) and (5), do not meet the requirements of Minn. Stat. § 14.06 (a) and Minn. R. 1400.2100, items D and E.

IT IS HEREBY ORDERED:

1. The revisions to Part 1800.2300, subpart 2a, paragraph (A), clauses (4) and (5) are **DISAPPROVED**.

Dated: May 24, 2013

s/Eric L. Lipman
ERIC L. LIPMAN
Administrative Law Judge

MEMORANDUM

Pursuant to Minn. Stat. § 14.26, the agency has submitted these rules to the Administrative Law Judge for a review as to legality. The rules of the Office of Administrative Hearings identify several types of circumstances under which a rule must be disapproved by the Administrative Law Judge or the Chief Administrative Law Judge.¹ These include circumstances in which the rule grants undue discretion to the agency or is unconstitutional.

Substantive Defects under Minn. R. 1400.2100, Items D and E

In proposed Minn. R. 1800.2300, subpart 2a, paragraph (A), the Board proposes to broaden the educational coursework that can be used by an applicant to demonstrate his or her qualifications for the Principles and Practice of Engineering examination. The proposed rule reads in part:

Subp. 2a. To qualify for admission to the written PE examination, the applicant shall present evidence of meeting the educational and qualifying experience requirements in items A and B.

A. Education:

....

(4) has a graduate degree from an engineering program where the bachelor's degree in that discipline of engineering or related discipline of engineering in the opinion of the board is EAC-ABET-accredited, even though the applicant's bachelor's degree was earned in a non-EAC-ABET-accredited or nonengineering program; or

(5) graduation from ~~an~~ a bachelor's engineering curriculum that has EAC-ABET accreditation and a graduate degree in engineering from an institution with an EAC-ABET-accredited bachelor's curriculum in that discipline of engineering or related discipline of engineering in the opinion of the board

In its Statement of Need and Reasonableness (SONAR) the Board states that a key purpose behind the expanded rule is to permit accreditation following a change in course description name. The SONAR states in part:

In sub-items (4) and (5), adding the phrase “or related discipline of engineering in the opinion of the board” gives a bit of leeway for changes in program names. It is not uncommon for a degree program to be renamed for marketing purposes, though the actual content of the program remains the same. Additionally, in some disciplines of

¹ Minn. R. 1400.2100.

environmental engineering, structural engineering, water resource engineering and water treatment engineering fall under the larger category of civil engineering.²

A rule must be sufficiently specific to provide fair warning of the type of conduct to which the rule applies.³ Discretionary power may be delegated to administrative officers "[i]f the law furnishes a reasonably clear policy or standard of action which controls and guides the administrative officers in ascertaining the operative facts to which the law applies, so that the law takes effect upon these facts by virtue of its own terms, and not according to the whim or caprice of the administrative officers."⁴

Here, however, clauses 4 and 5 do not set forth any criteria to guide the Board in making the equivalence determinations. As a result, the proposed rules are defective because they grant unfettered discretion to the agency to determine which disciplines are sufficiently related to engineering.

To cure this defect, the Administrative Law Judge recommends that the language be modified to constrain that discretion. Among the alternatives the Board could permissibly choose would be to list the specific disciplines that the Board regards as sufficiently "related" to engineering; to recognize all EAC-ABET accredited disciplines as sufficiently related to engineering; or to limit the recognition rule to those instances where there has been a change in course name. Amending the proposed rule in such a way is needed and reasonable, and would not result in rules that are substantially different from those originally published in the *State Register*.

E. L. L.

² SONAR, at 13.

³ *Cullen v. Kentucky*, 407 U.S. 104, 110 (1972); *Thompson v. City of Minneapolis*, 300 N.W.2d 763, 768 (Minn. 1980).

⁴ *Lee v. Delmont*, 228 Minn. 101, 113, 36 N.W.2d 530, 538 (1949); accord *Anderson v. Commissioner of Highways*, 126 N.W.2d 778, 780 (Minn. 1964).